S.B.CIVIL WRIT PETITION NO.5636/1999
SMT. NOORJAHAN BEGUM AND ORS. VS. RANJEET SINGH AND ORS.

DATE OF ORDER ::: 01/08/2005

HON'BLE JUSTICE MRS.GYAN SUDHA MISRA

Reportable

Mr. Mahendra Goyal for the petitioners.
Mr. Sitaram Samota for the respondents.

This writ petition has been filed challenging the order passed by the Motor Accident Claims Tribunal, Behror, Alwar by which the claim petition, filed by the claimants who are petitioners herein, has been rejected on account of non-apearance of the counsel for the petitioner before the Tribunal, when the matter was called out for conducting the proceeding on 24.11.1994.

It appears that a claim petition was filed on 4.1.1990 by the claimants for determination of compensation on account of death of the husband of the petitioner No.1-Smt. Noorjahan, who lost her husband as a result of an accident which was caused by the vehicle owned and possessed by respondent Nos.1 & 2 which however, shall be subject to scrutiny before the Tribunal. It is informed that the vehicle was also insured with respondent No.3-New India Insurance Company.

Be that as it may, the dispute at the moment is confined to the question as to whether the Tribunal was justified in dismissing the claim petition on account of non-appearance of the advocate for the claimants.

The counsel for the parties were heard and I have

also perused the impugned order of the Tribunal.

It is no doubt true that the Tribunal might be justified in dismissing a claim petition for non-appearance of the claimants or their counsel but it was also expected of the Tribunal to weigh the pros and cons as also its repercussion on the dismissal of the claim for compensation on account of non-appearance of the counsel representing the legal representatives of deceased claiming compensation. It is no doubt true that if from the facts of a particular situation, the bonafide of the petitioner and his advocate for non-appearance is lacking and it is reflected that the party and his counsel is guilty of latches and had no intention of pursuing the matter, the Court would be justified in dismissing the matter in default, but in claim cases, where the proceeding is for determination of compensation on account of death of a party whose legal representatives have filed a claim petition for awarding compensation, there possibly can be no intention for the claimants not to prosecute the matter diligently and, therefore, the Tribunals are expected to be considerate and wisely use their discretion before dismissing the claim petition for non-appearance of their advocate before the court.

Learned counsel for the appellant has also cited certain authorities in support of the aforesaid position, which are recorded hereinunder as follows:-

Smt. Vimla Devi & Anr. Vs. Majeed Mistri & anr., reported in WLC 2002 (4) 338

Rajendra Prasad @ Rajeev Vs. Suwalal & ors, reported in RLR 2002 (1) 423.

In these decisions also a similar view has been taken by the Coordinate Bench of this Court since the provisions under the Motor Vehicles Act for determination of compensation obviously is a beneficial legislation on account of grave consequence of the death of a member of the family of the claimant who had met with an accident. In such a situation, if the proceeding is dropped on account of non-appearance of an advocate without even knowledge of the same to the claimant, it is bound to result into grave miscarriage of justice to the claimants. In my considered opinion, the Tribunal while dismissing the claim petition on account of non-appearance of the advocate, should issue a notice to the claimants informing them about non-appearance of their advocate so that a suitable and alternative arrangement can be made by the affected claimant to arrange for his replacement. An analogy can be drawn between this situation and a situation arising in criminal appeals where the appeal of an accused is normally not dismissed on account of non-appearance of his advocate. In my view, in claim petitions too, if a counsel for the claimant does not appear for any reason whatsoever, the Tribunal should treat itself under an obligation to send a registered notice to the claimants informing him/her that their counsel has not appeared. In

absence of the same, long delay and latches are suffered by the claimants for no fault on their part by filing an appeal before the appellate forum. The position of course would be otherwise if the Tribunal prima facie finds the claim petition to be frivolous where the factum of accident or identity of vehicle is not proved and in addition the counsel for the claimant also disappears in which the dismissal of the claim petition might be held justified.

In the instant matter, the proceeding was dropped on account of non-appearance of the Advocate on 24.11.1994 and thereafter the restoration application also was rejected on 6.12.1996 after which this writ petition was filed. If the claimants-petitioners would have come to know regarding non-appearance of their advocate, it is most likely that the proceedings would not have been dropped and alternative arrangement could have been made by the claimants. Even otherwise, it has already been held by a Full Bench decision of this Court that the provision of the Code of Civil Procedure is not applicable strictly in the matters before the Tribunal and therefore the dismissal of the claim petition strictly on account of non-appearance of the advocate would not be an ideal situation. The impugned order of the Tribunal refusing to restore the claim petition for its adjudication on merit is, therefore, fit to be interfered with for the reasons stated hereinbefore.

Consequently, the impugned order dated 6.12.1996 stands quashed and set aside and the claim petition is

ordered to be restored to its original number before the Tribunal for its adjudication on merit after granting opportunity to the parties to contest the matter.

The counsel for the Insurance Company submitted that on account of restoration of the claim petition, the amount towards interest would be exorbitant for the Insurance Company to bear with.

This is a point to be urged by the counsel for the Insurance Company before the Tribunal at the time of adjudication of the proceeding as this writ petition is directed only against the rejection of the application for restoration of the claim proceeding and, therefore, the question of determination of interest obviously cannot be gone into at this stage. But the Tribunal is expected to take into consideration this aspect of the matter as and when the same is raised before the Tribunal at the time of adjudication. The parties are directed to appear before the Tribunal after receipt of the copy of this order.

The writ petition accordingly is allowed and disposed of.

[GYAN SUDHA MISRA],J.

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